

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

GREG DEES

PLAINTIFF

v.

Civil No. 05-3004

PACE INDUSTRIES, INC.

DEFENDANT

ORDER

On this 21st day of March 2006, the above referenced matter comes on for consideration. The Court, being well and sufficiently advised, finds and orders as follows:

1. On December 30, 2005, the defendant, Pace Industries, Inc. ("Pace") filed Defendant's Motion to Dismiss for Failure to Prosecute (doc. 18). In its motion, Pace sought dismissal of the complaint of Greg Dees ("Dees") pursuant to Rules 37 and 41 of the Federal Rules of Civil Procedure and requested sanctions against the plaintiff to reimburse the defendant for its attorneys' fees and costs incurred for the filing of Pace's motion and brief.

2. On January 24, 2006, Joseph Hughes, the attorney for Dees, responded to Pace's motion. In his response, Hughes states that he has been unable to locate Dees, and requests thirty (30) days to continue to locate Dees.

3. The Court held a telephone conference call on January 26, 2006. During the conference call, the Court allowed plaintiff's counsel until Friday, February 3, 2006 to secure the

presence of Dees for another telephone conference call. The Court noted that if plaintiff's counsel is not able to comply, plaintiff's complaint would be dismissed with prejudice.

4. On February 7, 2006, following communications between Joseph Hughes and Court personnel that Hughes was not able to locate Dees and was unable to comply with this Court's January 26, 2006 directive, Defendant's Motion to Dismiss for Failure to Prosecute (doc. 18) was granted and Dees' complaint was dismissed with prejudice. Further, Pace was allowed ten (10) days within which to submit a petition for attorneys' fees and costs.

5. **Defendant's Petition for Attorneys' Fees** (doc. 24) was filed on February 16, 2006. In its petition, Pace seeks attorneys fees and costs in the amount of \$1,510.07. According to Pace's petition and its attached exhibit, the attorneys fees sought were incurred for the filing of Defendant's Motion to Dismiss for Failure to Prosecute and accompanying brief.

6. The Court finds that plaintiff has offered no justification for his failure to abide by this Court's orders requiring discovery or to otherwise prosecute this action. **Defendant's Petition for Attorney's Fees** (doc. 24) is, therefore, **granted** and plaintiff is ordered to pay Pace's attorney's fees and costs associated with its motion and brief in the amount of **\$1,510.07**. Fed. R. Civ. P. 37(a)(4)(A).

7. Further, this Court reaffirms its previous award to Pace

of attorney's fees in the amount **\$150**, as set forth in this Court's Order of December 13, 2005 (doc. 17).

IT IS SO ORDERED.

/S/JIMM LARRY HENDREN
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE